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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Delivered on July 3, 2007

\+ CRL.REV.P.47/2006

JAI NARAYAN SINGH KASHYAP .....Petitioner
Through Mr. L.S. Choudhary, Advocate

versus

THE STATE OF NCT OF DELHI & ORS. .....Respondents
Through Mr. O.P. Saxena, APP for State

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes

2. To be referred to the Reporter or not? yes

3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat (open Court)

1. This is a revision directed against the judgment and order of the Additional Sessions Judge dated 8th August, 2005 whereby the respondent Nos. 2 and 3 were acquitted of the charges of having committed offences under Sections 431 and 380 IPC.

2. The complainant, who is the petitioner in these proceedings alleged that he had secured possession of the premises on 01.04.95 and, thereafter, left the town for a little while. He alleged that when he returned, the lock of the premises had been broken open and possession had been forcibly taken by the respondent/accused. It was also alleged

that the accused had committed offences under Sections 380 inasmuch as they had taken away some movables from the premises. During the course of the proceedings, an application was filed by the petitioner that the premises should be restored to him.

3. The trial Court, after considering the materials on record disbelieved the prosecution version, and discarded the testimony of PW-4, who sought to corroborate the complaint. The trial Court disbelieved that the only piece of evidence relied upon by the complainant, namely, a document, said to be a rent receipt.

4. Mr. L.S. Choudhary, learned counsel contended that the trial Court fell into grave error in acquitting the respondent/accused. According to the counsel, the petitioner had secured possession of the premises barely 4-5 days prior to the incident and in these circumstances, the trial Court ought not to have deduced that evidence of PW-4 was irrelevant. It was contended that the trial Court erred in law in holding that the version of PW-4 was unreliable since there was no finding that the witness was not an independent witness. It was next contended that the circumstances of the case showed that the petitioner was unable to rely on the testimony of any of the neighbours as the duration of possession was very short. Counsel contended that this could not be termed as deficiency, as the nature of the evidence adduced was sufficient to point at the accused's guilt.

5. Learned counsel sought to place reliance upon an interlocutory order by which the accused had given up the claim to the premises. It was admitted that they had in fact forcibly entered the possession and, therefore, were guilty of the offences.

6. The trial Court, on the basis of its assessment of testimony of PW-4 discarded his deposition. It also disbelieved the version of the complainant/petitioner PW-5. The chief reasons appear to be two fold – one, the lack of any material apart from the rent receipt to show that the petitioner was indeed given possession on the date he claimed i.e. 01.04.95. The second reason which persuaded the trial Court to acquit the accused was that the ostensible landlord Shri Satish Chand Atreya had not been examined as a witness in the proceedings.

7. I have considered the materials on record. The only documentary evidence relied upon by the petitioner was the rent receipt. However, that was not executed by Shri Attray. In fact, the latter was not even examined during the course of the proceedings. It is well settled that in a criminal proceeding, that the guilt of the accused has to be proved beyond reasonable doubt. In the facts of this case, the trial Court declined to convict the accused due to insufficiency of evidence.

8. On an overall conspectus of the materials on record and also having heard submissions on behalf of the parties, I am in agreement with the findings of the trial Court. The failure to examine the landlord was a

serious infirmity. The record also shows that the person who let out the premises was not the owner; according to the complainant, he was the legal heir of the mortgagee of the owner. The scope of revisional jurisdiction of the High Court is extremely limited. It does not extent to re-appraisal of evidence as an appellate forum; indeed Section 401 (3) enjoins the High Court not to convert a finding of fact by Trial Court into one of conviction. The limited scope is only to intervene where the facts disclose a glaring unreasonable approach by the trial Court in the conduct of its proceeding or in its appreciation of law. I find no such grounds made out in these proceedings.

Accordingly, the petition has to fail; it is, therefore, dismissed.

S. RAVINDRA BHAT,J

JULY 03, 2007
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